Dato' Kadar Shah bin Tun Sulaiman v Datin Fauziah bt Haron

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S10(S3)–22–223 OF 2004
HARMINDAR SINGH JC
22 MAY 2009

Equity — Gift — Presumption of — Money deposited by husband into bank account as collateral for loan taken for purchase of car in wife's name — Whether collateral money a gift from husband — Whether husband could seek refund of collateral money

Trusts and Trustees — Resulting trust — Whether sufficient evidence of intention to create resulting trust — Whether presumption of resulting trust had arisen — Car purchased by husband and registered in wife's name — Money deposited by husband into bank account as collateral for loan taken for purchase of car — Wife to service loan repayments — Whether resulting trust arose in favour of husband over collateral money — Whether presumption of resulting trust negated by doctrine of presumption of advancement

The plaintiff and the defendant were at all relevant times husband and wife. They had since separated. The plaintiff had purchased a Jaguar car for about USD82,000 for the defendant. An advance of USD30,000 was paid. The balance of about USD50,000 was financed by the Bank of Hawaii. The car was registered in the name of the defendant. Being a foreigner, the bank advised the defendant to open a separate time deposit account in the bank as collateral for the monthly installment repayments of the loan. The plaintiff therefore deposited a sum of USD52,755.45 ('the said sum') into the time deposit account in the Bank of Hawaii. The monthly installments of USD1,142 came from another account at the Bank of Hawaii. The said sum remained untouched. The Bank of Hawaii could have had recourse to it in the event the installments were not paid. Subsequently the plaintiff instructed the defendant to transfer the said sum to the plaintiff's and defendant's joint account at the Bank of Hawaii. The defendant however refused to do so alleging that the said sum was a gift by the plaintiff for the purchase and maintenance of the car. The plaintiff in this suit prayed for a declaration that the said sum was held on trust by the defendant for the plaintiff and sought the return of the said sum. The defendant testified that she had used the said sum to pay for the car.

Held, disallowing the plaintiff's claim for refund of money:

(1) If A puts his money in the name of B, there is a resulting trust in favour of A. This means that A retains the beneficial interest of the money. This can be rebutted if it can be shown that at the time the money was given, there existed a common intention between A and B that the beneficial interest in the money was to be for B. This presumption of resulting trust can also be negated by the doctrine of presumption of advancement. The resulting trust would not arise if B was A's wife or child or someone to whom A stands in loco parentis. However, this presumption of advancement can also be rebutted if A can show that, at the time of the transaction, there was between A and B a common intention that it was to be otherwise. The onus to show this would be on A (see paras 3–4).

(2) The Jaguar car was a gift from the plaintiff to the defendant. However, the said sum was not gift. It was meant as collateral for the financing of the car. In the event that all the installments were paid, the intention clearly was that the money was to be returned to the plaintiff. The purpose of the said sum was specific (see paras 7–8).

(3) Since the defendant was holding the said sum on trust for the plaintiff, the plaintiff was therefore entitled to the declaration he sought. However, as the said sum was meant as collateral for the financing of the car which was a gift from the plaintiff to the defendant and which sum was in the end utilised to pay for the car, the prayer for the refund of the said sum was refused (see para 13).

[Bahasa Malaysia summary

Plaintif dan defendan pada masa berkenaan merupakan suami dan isteri. Mereka kini telah berpisah. Plaintif telah membeli kereta Jaguar pada harga USD82,000 untuk defendan. Pendahuluan sebanyak USD30,000 telah dibayar. Baki sebanyak USD50,000 telah dibiayai oleh Bank of Hawaii. Kereta tersebut telah didaftarkan atas nama pihak defendan. Oleh kerana defendan bukan warganegara, pihak bank menasihatkan defendan untuk membuka akaun deposit yang berasingan di bank sebagai kolateral untuk bayaran pinjaman secara ansuran bulanan. Oleh itu plaintif telah mendeposit jumlah sebanyak USD52,755.45 ('jumlah tersebut') ke dalam akaun deposit masa di Bank of Hawaii. Bayaran ansuran bulanan sebanyak USD1,142 datangnya daripada akaun lain di Bank of Hawaii. Jumlah tersebut masih tidak disentuh. Bank of Hawaii sepatutnya boleh menggunakannya jika ansuran tersebut tidak boleh dibayar. Seterusnya plaintif mengarahkan defendan untuk memindahkan jumlah tersebut kepada akaun bersama plaintif dan defendan di Bank of Hawaii. Walau bagaimanapun, defendan enggan berbuat demikian dengan mengatakan bahawa jumlah tersebut

merupakan hadiah daripada plaintif untuk pembelian dan penyelenggaraan kereta tersebut. Plaintif dalam guaman ini memohon deklarasi bahawa jumlah tersebut dipegang atas amanah oleh defendan kepada plaintif dan memohon jumlah tersebut dikembalikan. Defendan telah memberikan keterangan bahawa dia telah menggunakan jumlah tersebut untuk membayar kereta.

Diputuskan, menolak tuntutan plaintif untuk pengembalian semula wang:

(1) Sekiranya A meletakkan wangnya atas nama B, ini merupakan amanah berbangkit bagi pihak A. Ini bermakna A mempunyai kepentingan benefisial ke atas wang tersebut. Anggapan ini boleh dipatahkan sekiranya pada waktu wang tersebut diberikan, terdapat niat yang sama antara A dan B bahawa kepentingan benefisial dalam wang tersebut adalah untuk B. Anggapan amanah berbangkit boleh disangkal oleh doktrin anggapan pendahuluan. Amanah berbangkit tidak akan timbul sekiranya B merupakan isteri kepada A atau anak atau seseorang yang mana A sebagai ganti ibu bapa. Walau bagaimanapun, anggapan pendahuluan boleh dipatahkan sekiranya A boleh menunjukkan bahawa, pada masa transaksi tersebut, terdapat niat yang sama antara A dan B bahawa ia untuk sebaliknya. Beban membukti berada pada A (lihat perenggan 3–4).

(2) Kereta Jaguar merupakan hadiah daripada plaintif kepada defendan. Walau bagaimanapun, jumlah tersebut bukanlah hadiah. Jumlah tersebut dimaksudkan sebagai kolateral untuk membiayai kereta. Apabila kesemua ansuran sudah dibayar, niat yang jelas adalah wang tersebut dikembalikan kepada plaintif. Tujuan pemberian wang tersebut adalah khusus (lihat perenggan 7–8).

(3) Memandangkan defendan telah memegang jumlah tersebut atas amanah bagi pihak plaintif, maka plaintif berhak ke atas akuan yang dipohon. Walau bagaimanapun, memandangkan jumlah tersebut dimaksudkan sebagai kolateral bagi membiayai kereta yang mana merupakan hadiah daripada plaintif kepada defendan dan jumlah tersebut akhirnya digunakan untuk membayar kereta tersebut, maka rayuan untuk memulangkan semula jumlah tersebut ditolak (lihat perenggan 13).]

Notes

For a case on presumption of gift, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) para 2726.

For cases on resulting trust, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2430–2478.

Cases referred to

Lew Pa Leong v Chi Shen Lan [2007] 4 MLJ 13; [2007] 1 CLJ 603, CA (refd)

Liew Choy Hung v Fork Kian Seng [2000] 1 MLJ 635; [2001] 1 CLJ 36, HC (refd)

Neo Tai Kim v Foo Stie Wah [1982] 1 MLJ 170; [1980–1981] SLR 215, CA (refd)

Tinker v Tinker [1970] 2 WLR 331, CA (refd)

Vana Vadiveloo (Basil Douglas Anthony with him) (Kumar Jaspal Quah & Aishah) for the plaintiff.

Ken St James (Wang Siew Yong with him) (Michael Chai & Co) for the defendant.

Harmindar Singh JC:

[1] The plaintiff and the defendant were at all relevant times husband and wife. They have since separated. Sometime in 1999, the plaintiff deposited a sum of USD50,000 into a time deposit account of the defendant in the Bank of Hawaii in the United States. The account number was 0000293712. Later in October 2003, the plaintiff instructed the defendant to transfer the said monies in the time deposit account to the plaintiff's and defendant's joint account at the Bank of Hawaii, United States. She refused to do so. She alleged that the said monies were a gift by the plaintiff for the purchase and maintenance of a Jaguar car. The plaintiff now prays for a declaration that the sum of USD50,000, which was actually USD52,755.45, was held on trust by the defendant for the plaintiff. He seeks for the return of the said monies.

[2] The personal feud between the plaintiff and the defendant was no doubt ignited by some serious disagreements. But it also raises an important question of law as to when can a person be regarded to be holding money given or property transferred to him or her as holding such on trust and not beneficially. So what is the law in this regard? The cases of *Lew Pa Leong v Chi Shen Lan* [2007] 4 MLJ 13; [2007] 1 CLJ 603; *Neo Tai Kim v Foo Stie Wah* [1982] 1 MLJ 170; [1980–1981] SLR 215; *Tinker v Tinker* [1970] 2 WLR 331 and *Liew Choy Hung v Fork Kian Seng* [2000] 1 MLJ 635; [2001] 1 CLJ 36 are instructive.

[3] What can be gathered from these cases is this. If A purchases property and pays for it with his own money but puts it in the name of B (or A puts his money in the name of B), there is a resulting trust in favour of A. This means that A retains the beneficial interest of the property or money as the case may be. This can of course be rebutted if it can be shown that at the time of purchase (or at the time the money was given), there existed a common

intention between A and B that the beneficial interest in the property or money was to be for B. In other words, A had intended that B is was to take the property or money beneficially.

[4] This presumption of resulting trust can also be negated by the doctrine of the presumption of advancement. This means that the resulting trust would not arise if B was A's wife or child or someone to whom A stands in loco parentis. The presumption of advancement arises because of the relationship of the parties. So in this example, B would be the beneficial owner of the property or money.

[5] However, this presumption of advancement can also be rebutted if A (the husband) can show that, at the time of the transaction, there was between A (the husband) and B (the wife or child) a common intention that it was to be otherwise. The onus to show this would be on A.

[6] In the instant case, the evidence disclosed that the plaintiff had purchased the Jaguar car for about USD82,000. An advance of USD30,000 was paid. The balance of about USD50,000 was to be financed by the Bank of Hawaii. The car was to be registered in the name of the defendant. Being a foreigner, she could not directly or formally get financing. The bank advised the defendant to open a separate time deposit account in the bank as collateral for the monthly installment repayments of the loan. The plaintiff then deposited a sum of USD52,755.45 into the time deposit account in the Bank of Hawaii. It should be noted, and the significance of which would become apparent later, that the monthly installments of USD1,142 came from another account at the Bank of Hawaii. The USD 52,755.45 remained untouched. The Bank of Hawaii could have recourse to it in the event the installments were not paid.

[7] The first question that requires an answer is this. Was the Jaguar car a gift from the plaintiff to the defendant? The answer I think is plain enough. The car was registered in her name. It had the defendant's nick name 'GEE' as the personalised registration number of the car. It was not disputed that the plaintiff was not averse to giving the defendant generous gifts to the defendant in the form of expensive diamonds or jewellery. As the son of the plaintiff and defendant (SP2) testified, this car was known as his mother's car. It was not the family car. The plaintiff and the children had their own cars. The plaintiff is certainly not asking for the return of the Jaguar car and rightly so. It was because it was a gift.

[8] But more importantly, was the USD50,000 also a gift as the defendant is now contending? I do not think it was. It was meant as collateral for the financing of the car. Of course if the installments were not paid, this

A USD50,000 would then be used by the Bank of Hawaii as payment. But as long as the installments were being paid, this money was not to be touched. In the event that all the installments were paid, the intention clearly was that the money was to be returned to the plaintiff. The purpose of this USD50,000 was also a gift just like the Jaguar car, this was certainly not the
B case as borne out by the evidence adduced at the trial.

[9] In coming to this view, I have not overlooked the fact that the defendant had looked after the plaintiff when he had a heart attack in 1998. It was submitted that both the car and the money were gifts because the
C plaintiff was indebted to the defendant. I have no doubt that the defendant's conduct in this regard was highly admirable. But then, the car was only purchased in September 2001, well after the plaintiff's medical difficulties were resolved. Even if it were the case as the defendant's contends, the purchase of the car as a gift could be understandable but not the USD50,000
D collateral as well. For these reasons, I was not persuaded by this argument.

[10] So should this then be the end of the matter? I'm afraid it is not. The defendant testified in August 2003, she used the moneys in the time deposit
E account to pay for the car. After she utilised the moneys for this purpose, there was only few thousand dollars left.

[1] Could this possibly be true? When the plaintiff was asked about this during cross-examination, he replied that he did not know if the car was fully paid up. He also said that he did not know if in August 2003, the
F defendant fully paid off the loan for the car. It was also never suggested to the defendant during cross-examination that she did not pay off for the car in 2003 using the moneys in the time deposit account. Instead, what was suggested was that she made the payments on her own accord to which she replied that it was to pay for the car.

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[2] It was also not disputed that the monthly installments for the repayment of the Jaguar car was USD1,142.27. Since the loan was for the sum of about USD50,000, it would have taken the plaintiff at least five years before the loan was cleared. Considering these circumstances,
H I accepted the testimony of the defendant to be a candid account of how the moneys in the time deposit account were used to repay the outstanding loan for the car.

[3] Given the state of affairs, is the plaintiff entitled to the relief he is seeking? For the reasons that I have stated earlier, the defendant was
I indeed holding the sum of USD50,000 on trust for the plaintiff. The plaintiff is therefore entitled to the declaration as sought in prayer (i). However, as the USD50,000 was meant as collateral for the financing of the car which was a gift from the plaintiff to the defendant and which sum was in the end utilised to pay for the car, the prayer for the refund

of the USD50,000 is refused. In the final analysis, the plaintiff has lost nothing in that instead of the installment payments coming from him from another account, the USD50,000 collateral was used to pay the same.

[4] Since the plaintiff has failed to get the refund of the USD50,000 which was really the whole purpose of this action, the defendant is entitled to costs, which is not agreed, should be taxed.

Claim for refund of money disallowed.

Reported by Kanesh Sundrum